

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

APPLETON PAPERS INC. and	:	
NCR CORPORATION,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 2:08-cv-00016-WCG
	:	
GEORGE A. WHITING PAPER COMPANY,	:	
P.H. GLATFELTER COMPANY, MENASHA	:	
CORPORATION, GREEN BAY PACKAGING	:	
INC., INTERNATIONAL PAPER COMPANY,	:	
LEICHT TRANSFER & STORAGE COMPANY,	:	
NEENAH FOUNDRY COMPANY, NEWPAGE	:	
WISCONSIN SYSTEM INC., THE PROCTER	:	
& GAMBLE PAPER PRODUCTS, and	:	
WISCONSIN PUBLIC SERVICE CORP.	:	
CITY OF APPLETON,	:	
CITY OF DE PERE,	:	
CITY OF GREEN BAY,	:	
CITY OF KAUKAUNA,	:	
BROWN COUNTY,	:	
GREEN BAY METROPOLITAN	:	
SEWERAGE DISTRICT,	:	
HEART OF THE VALLEY METROPOLITAN	:	
SEWERAGE DISTRICT,	:	
NEENAH-MENASHA SEWERAGE	:	
COMMISSION,	:	
VILLAGE OF KIMBERLY,	:	
VILLAGE OF WRIGHTSTOWN,	:	
WTM I COMPANY, and	:	
U.S. PAPER MILLS CORPORATION,	:	
	:	
Defendants.	:	

**DEFENDANT P.H. GLATFELTER COMPANY'S MOTION TO DISMISS IN PART
PLAINTIFFS' FIFTH AMENDED COMPLAINT**

Defendant P.H. Glatfelter Company ("Glatfelter"), by its undersigned counsel, respectfully moves this Court to dismiss in part Plaintiffs Appleton Papers Inc.'s and NCR Corporation's Fifth Amended Complaint, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal

Rules of Civil Procedure. Glatfelter seeks the same relief that it sought in its Motion to Dismiss in Part Plaintiffs' Second Amended Complaint (Dkt. No. 58) -- that is, to dismiss: (i) all portions of Counts I and II of the Fifth Amended Complaint seeking to recover from Glatfelter "OU1 Response Activities and Costs," as defined in the consent decree entered in *United States v. P.H. Glatfelter Co.*, No. 2:03-cv-949-LA; (ii) all portions of Count I of the Fifth Amended Complaint seeking to recover natural resource damages; and (iii) Count III of the Fifth Amended Complaint in its entirety -- for the same reasons set forth in that motion and the accompanying Memorandum in Support (Dkt. No. 58). Therefore, Glatfelter incorporates herein by reference its Motion to Dismiss in Part Plaintiffs' Second Amended Complaint, its Memorandum in Support of that motion, and its proposed Order (Dkt. No. 58).

On April 11, 2008, plaintiffs filed a Third Amended Complaint (Dkt. No. 80) which added seven additional defendants but did not alter the allegations against Glatfelter. Consequently, Glatfelter filed in response a motion to dismiss the Third Amended Complaint (Dkt. No. 101), which incorporated by reference Glatfelter's prior motion to dismiss and supporting memorandum and proposed order (Dkt. No. 58). Plaintiffs' filing of the Third Amended Complaint did not affect the arguments made in Glatfelter's Motion to Dismiss in Part Plaintiffs' Second Amended Complaint or the Court's resolution of the motion to dismiss.

On June 11, 2008, plaintiffs filed a Fourth Amended Complaint (Dkt. No. 148) adding 10 additional defendants (for a total of 20 defendants). One day later, on June 12, plaintiffs filed a Fifth Amended Complaint (Dkt. No. 149) adding yet two more defendants. The Fifth Amended Complaint modifies a few of the allegations from the Third Amended Complaint

but does not alter materially the allegations directed against Glatfelter.¹ Plaintiffs already have responded to Glatfelter's prior motion to dismiss (Dkt. No. 92), Glatfelter has already filed a reply brief in support of its prior motion to dismiss (Dkt. No. 120), and the United States has filed a brief as *amicus curiae* (Dkt. Nos. 131, 145). Accordingly, Glatfelter does not anticipate that this present motion will affect the Court's disposition of the motion to dismiss.

Dated: June 19, 2008

Respectfully submitted,

s/ Sabrina Mizrachi
David G. Mandelbaum
Marc E. Davies
Sabrina Mizrachi
Jennifer E. Simon
Ronald M. Varnum
BALLARD SPAHR ANDREWS &
INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103
Telephone: 215-665-8500
Facsimile: 215-864-8999
mandelbaum@ballardspahr.com
davies@ballardspahr.com
mizrachis@ballardspahr.com
simonj@ballardspahr.com
varnumr@ballardspahr.com

Attorneys for Defendant,
P.H. Glatfelter Company

¹ For example, compare Third Amended Complaint ¶ 37 ("As of the filing of this Third Amended Complaint, API has paid in excess of \$1.7 million and NCR has paid approximately \$1.4 million") with Fifth Amended Complaint ¶ 61 ("As of March 31, 2008, API had paid in excess of \$1.7 million and NCR had paid approximately \$1.4 million"); Third Amended Complaint ¶ 39 ("Very little if any of the work required under the 2007 Amended ROD has been performed to date, and accordingly few of the costs of the 2007 Amended ROD have been incurred yet.") with Fifth Amended Complaint ¶ 63 (omitting the allegation).

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of June 2008, a true and correct copy of the foregoing Defendant P.H. Glatfelter Company's Motion to Dismiss in Part Plaintiffs' Fifth Amended Complaint was filed electronically via the Electronic Court Filing system and is available for viewing and downloading by the following:

Joseph J. Beisenstein Mark R. Feldmann Menn Law Firm Ltd. 2501 East Enterprise Ave. P.O. Box 785 Appleton, WI 54912-0785	Colin C. Deihl Jacy T. Rock Faegre & Benson LLP 3200 Wells Fargo Center 1700 Lincoln St. Denver, CO 80203
David J. Edquist Patrick L. Wells Christopher P. Riordan von Briesen & Roper SC 411 East Wisconsin Ave., Suite 700 P.O. Box 3262 Milwaukee, WI 53201-3262	Delmar R. Ehrich Faegre & Benson LLP 2200 Wells Fargo Center 90 South 7th St. Minneapolis, MN 55402-3901
J. Ric Gass Gass Weber Mullins LLC 309 North Water St., Suite 700 Milwaukee, WI 53202	Scott B. Fleming Weiss Berzowski Brady LLP 700 North Water St., Suite 1400 Milwaukee, WI 53202-4206
Philip A. Munroe DiRenzo & Bomier LLC Two Neenah Center, Suite 701 P.O. Box 788 Neenah, WI 54957-0788	Michael L. Hermes Metzler Timm Treleven & Hermes SC 222 Cherry St. Green Bay, WI 54301-4223
Russell W. Wilson Ruder Ware LLSC 500 1st St., Suite 8000 P.O. Box 8050 Wausau, WI 54402-8050	Kathleen L. Roach Joan Radovich Evan B. Westerfield J. Andrew Schlickman Sidley Austin LLP 1 South Dearborn St. Chicago, IL 60603

<p>Randall M. Stone United States Department of Justice (D.C.) Environment & Natural Resources Division P.O. Box 7611 Washington, D.C. 20044</p>	<p>Linda E. Benfield, Esq. Sarah A. Slack, Esq. Foley & Lardner, LLP 777 East Wisconsin Ave. Milwaukee, WI 53202-5300</p>
<p>Michelle A. Gale Arthur F. Radke Dykema Gossett PLLC 10 South Wacker Drive, Suite 2300 Chicago, IL 60606</p>	<p>Daniel C. Murray Johnson & Bell Ltd. 33 West Monroe St., Suite 2700 Chicago, IL 60603-5404</p>
<p>Sonja A. Inglin John F. Cermak, Jr. Baker Hostetler LLP 12100 Wilshire Blvd., 15th Floor Los Angeles, CA 90025</p>	<p>Timothy B. Anderson Remley & Sensenbrenner SC 219 East Wisconsin Ave. Neenah, WI 54956</p>
<p>William E. Coughlin Thomas R. O'Donnell Calfee, Halter & Griswold, LLP Key Bank Center 800 Superior Ave., Suite 1400 Cleveland, OH 44114-2688</p>	<p>Charles M. Gering Foley & Lardner LLP 321 North Clark St., Suite 2800 Chicago, IL 60610-5313</p>
<p>Joseph C. Basta Dykema Gossett PLLC 2723 S. State St., Suite 400 Ann Arbor, MI 48104</p>	<p>Ted Waskowski Richard C. Yde Stafford Rosenbaum LLP 222 West Washington Ave., Suite 900 P.O. Box 1784 Madison, WI 53701-1784</p>
<p>Lora L. Zimmer Hinshaw & Culbertson LLP 100 West Lawrence St. Appleton, WI 54911</p>	<p>Kevin J. Lyons William J. Mulligan Davis & Kuelthau SC 111 East Kilbourn Ave., Suite 1400 Milwaukee, WI 53202-6613</p>
<p>Thomas R. Schrimpf Hinshaw & Culbertson LLP 100 East Wisconsin Ave., Suite 2600 Milwaukee, WI 53202-4115</p>	<p>Bruce A. Olson Davis & Kuelthau SC 318 South Washington St., Suite 300 Green Bay, WI 54301</p>

In addition, a copy will be sent by U.S. Mail to the following:

James A. Gunz Gunz Law Office 1142 Glenayre Dr. Neenah, WI 54956-4236	City of Appleton 100 North Appleton St. Appleton, WI 54911
City of Green Bay 100 North Jefferson St. Green Bay, WI 54301-5026	City of Kaukauna 201 West 2 nd St. Kaukauna, WI 54130-2442
Brown County P.O. Box 23600 Green Bay, WI 54305-3600	Green Bay Metropolitan Sewerage District P.O. Box 19015 2231 North Quincy St. Green Bay, WI 54307-9015
Village of Kimberly Kimberly Municipal Complex 515 West Kimberly Ave. Kimberly, WI 54136	Village of Wrightstown P.O. Box 227 Wrightstown, WI 54180
WTM I Company c/o SCA Tissue North America P.O. Box 2400 Neenah, WI 54957-2400	U.S. Paper Mills Corporation c/o Sonoco Products Company One North 2 nd St. Hartsville, SC 29550

s/ Sabrina Mizrachi
Sabrina Mizrachi